



# Town Of Amenia

36B MECHANIC STREET, PO BOX 126, AMENIA, NY 12501  
TEL: 845-373-8860, x106 FAX: 845-373-9147

## PLANING BOARD MEETING THURSDAY, OCTOBER 7, 2010

PRESENT: Chairman William Flood  
Tony Robustelli  
Nina Peek  
George Fenn  
Norm Fontaine  
Michael Hayes, Atty.

ABSENT: Peter Clair  
James Walsh

MOTION TO OPEN THE MEETING AT 7:04 P.M. was made by George Fenn, seconded by Norm Fontaine

VOTE TAKEN - MOTION CARRIED

### PUBLIC HEARING:

**Lippincott/Cawley Two Lot Subdivision Tower Hill Road**

MOTION TO OPEN THE PUBLIC HEARING FOR LIPPINCOTT/CAWLEY was made by Nina Peek, seconded by George Fenn

VOTE TAKEN - MOTION CARRIED

MOTION TO CONTINUE THE PUBLIC HEARING UNTIL THE MEETING OF NOVEMBER 4<sup>TH</sup>, 2010 was made by Nina Peek, seconded by George Fenn

VOTE TAKEN - MOTION CARRIED

### REGULAR MEETING:

**Thomas LeJeune, Jr. Lot Line Adjustment Railroad Avenue**  
Thomas LeJeune gave the members who were not at the prior meeting the map of the proposed lot line change.

MOTION TO SCHEDULE THE PUBLIC HEARING FOR THE LEJEUNE LOT LINE

**OTHER MATTERS:**

## **Syms**

## **Amenia Hills**

## **Depot Hill**

Dr. Klemens went over his memo of September 30, 2010. (See Attached) Chairman Flood stated that 19 lots were approved for the project. At that time, Mr. Syms was working with the Town on the water issue. Presently, Mr. Syms has drilled two wells across the road from the proposed project. The Town, about a year ago, received a letter from DEC looking for the final signed maps. They do not exist. Mr. Hayes added Amenia Hills went through the full environmental review; DEIS, FEIS and Findings Statement, however, the environmental review never considered or studied if they had drilled wells vs. hooking into the Town water system. The Planning Board strongly urged Mr. Syms at that time to include drilled wells in the study, however, Mr. Syms felt confident the Town would accept his plans for the water district hookup. The DEC/Department of Health told the town they could not expand the water district, therefore Amenia Hills could not hook up to Town water. The SEQRA review that was completed, never considered this alternative as well as changes in the Bog Turtle recovery plan regulations. Should SEQRA be reopened and should the Board revoke the Preliminary Subdivision Approval. The applicant asked the Board to grant final site plan approval.

Chairman Flood asked Michael Hayes is where the Board stands legally? The Board has the authority to determine that a supplemental EIS should be prepared. In doing this only the changes that require review may be: i.e., wells, Bog Turtle Recovery Plan, changes the regulatory agencies enforcement approach, and questions of historical data if they are still reliable or outdated. The Board must come up with a list to justify reopening SEQRA, and then the SEIS would be limited to those issues. The Preliminary Approval would need to be revoked as SEQRA would not be complete. The need to look at some legal issues that may be implicated by Dr. Klemens analysis regarding the 300' buffer zone, may find that some of the lot is now not buildable. Mr. Syms need to respond to Dr. Klemens memo and Mike Soyka needs to look at the storm water issues.

## **OTHER MATTERS:**

**Depot Hill:** Chairman Flood asked Michael Hayes what will happen with Depot Hill as it has been almost one year. Mr. Hayes stated they have no approvals to date. Some of the information the Board has, is it stale or reliable after this length of time? Norm Fontaine felt there should be end dates on things like this.

## **Lippincott/Cawley**

## **Driveway**

Chairman Flood spoke with Mike Soyka to take a look at the driveway. Chairman Flood spoke with Dan Wheeler, Engineer for the project, telling him Mike Soyka's comments from a July memo had received no response from the applicant. The Board will make the decision as to what will need to be done with the driveway. The sub division regulations state that if you have a steep slope of over 12% on the driveway, the applicant must have approval on erosion, storm water management and drainage as well as written approval from the Fire Company. Therefore, the applicant must meet both these requirements. The Wassaic Fire Company has already sent a letter approving the driveway. Norm Fontaine felt a standard should be set for what is acceptable and what is not regarding the 12% grade.

## **Silo Ridge Update**

Chairman Flood spoke with Mike Dignacco. The MOU regarding the waste water treatment plant for the Town has been sent to the attorney.

**Conference:**

There is a conference at Listening Rock Farm on October 30, 2010 “Stepping up to Sustainability in the Harlem Valley. It will start at 9:00 AM and run to 12:45 PM. Any Board member interested, contact Lana Anguin at Town Hall.

Nina Peek asked in regards to the Petrides project if the argument is that in order for the house location to be located within the SPO it needs to be visible from three or more locations AND on slopes greater than 25%. From Dr. Klemens and Mike Soyka’s memos it is not really the house location it is the driveway. Michael Hayes stated the driveway itself exceeds the scope of the trigger for an SPO analysis. It is over 5000 square feet of clearing in the SPO. Even if for the sake of argument the applicant could demonstrate that the house is not in the SPO, the driveway is clearly in the SPO. It has 25% slopes, exceeds the clearing trigger, and is viewed from 3 or more points.

MOTION TO CLOSE THE MEETING was made by Norm Fontaine, seconded by George Fenn

VOTE TAKEN - MOTION CARRIED

Respectfully submitted,

Susan M. Metcalfe  
Planning Board Secretary

The foregoing represents unapproved minutes of the Town of Amenia Planning Board from a meeting held on October 7, 2010 and are not to be construed as the final official minutes until so approved.

      X       Approved as read

           Approved with: deletions, corrections, and additions

To Follow:      Memo of Mike Soyka – 4 pages  
                    Memo of Dr. Klemens – 2 pages  
                    Memo of Dr. Klemens – 2 pages



# Memorandum

To: Planning Board  
Town of Amenia

Attn: Bill Flood  
Chairman

From: Michael W. Soyka, P.E.

Subject: Review Comments

Date: September 30, 2010

Project: Petrides Subdivision

The following material was reviewed:

- Part 1 Full Environmental Assessment Form, undated
- Subdivision Map prepared for George Petrides dated December 22, 2008 with no revisions
- Subdivision (Engineering Plan) dated 04/13/10 and last revised on 09/08/10
- Subdivision Details dated 04/13/10 and last revised on 09/08/10
- Site visit

The following is offered for consideration by the Board:

## **FULL ENVIRONMENTAL ASSESSMENT FORM**

1. Complete the non-discretionary information on page 1.
2. Expand the Description of Action on page 2 to include the following:
  - a. Description of driveway options including the steep slopes disturbed by both, the length of each driveway and the total site disturbance for each driveway option.
3. Item A.4. on page 3 indicates that there are rock outcroppings, yet none are shown on the plan.
4. Page 4, Item A.11.: Obtain written confirmation from the NYSDEC that there are no threatened or endangered plant or animal life on the project site.
5. Per the Dutchess County Parcel Access site, the project is located in Agricultural District 21. Revise the response to question A.18.
6. Refer to question B.25. on page 8:
  - a. Both "yes" and "no" are checked for "City, Town Village Board". Check only one box.
  - b. Provide a response to "Other Local Agencies".
  - c. Provide a response to "Other Regional Agencies".
  - d. A response of "yes" may be applicable to "State Agencies" if the disturbance caused by this project is greater than one (1) acre.

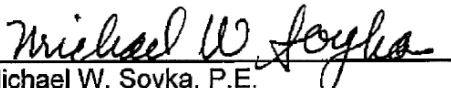
7. Refer to item C.1., also on page 8:
  - a. The box marked "Site Plan" should also be checked. This project will require site plan approval per § 121-14.1.D(2)(b) of the Town Code.
8. Refer to item C.7.
  - a. Are the predominant land uses within a ¼ mile radius of the proposed action residential, agricultural or both?
  - b. List the zoning classification within a ¼ mile radius of the proposed action.
9. Complete Section E Verification.

**PLAN REVIEW COMMENTS**

1. The map entitled "Subdivision Map prepared for George Petrides" does not show the subdivision of the parent parcel.
2. Show the location of the septic tanks and the piping from each house to the tank and from the tank to the tile field.
3. The proposed parcels are in the Upland Aquifer.
4. The proposed parcels are in the Scenic Protection Overlay District.
5. The parcel is in an Agricultural District. If the parcel is located within 500 feet of a farm operation located in an Agricultural District, provide an Agricultural Data Statement in accordance with § 121-37(C).
6. Demonstrate that the driveways comply with § 105-22 (L).
  - a. Provide the profile of the single driveway from Separate Road to the house on Lot 2.
  - b. Provide the profile of the common driveway from Separate Road to the house on Lot 2.
7. § 105-22(I). Provide the required common driveway easement and maintenance agreement for a shared driveway as required by this section.
8. § 121-14.1.D(2)(b). This parcel is located within the SPO District. Site Plan approval (emphasis added) shall be required for the following uses and activities including residential uses that are otherwise allowed without site plan review by the Use Table in § 121-10:
  - a. (2) Within any one year period, in any location that is visible from a publicly accessible place when there are no leaves on the trees:
    - i. (b) Clear-cutting of more than 5,000 square feet of vegetation on any parcel.
  - b. Clear-cutting of more than 5,000 square feet of vegetation will occur in the Scenic Ridge Zone for the installation of the driveway and proposed house.
9. The applicant should provide a slope analysis of the areas of disturbance in order to determine if those areas of disturbance contain steep slopes of at least 5,000 square feet. If steep slopes will be disturbed, the provisions of § 121-36 Steep Slope Regulations should be followed.

10. § 121-43.A. New driveway entrances shall require permission from the Town Superintendent of Highways for town roads. Provide documentation that the Town Superintendent of Highways has given permission for the proposed individual driveway on Separate Road. *New driveway*
11. § 105-22.I. If a common driveway is intended, then a statement shall be placed on the final plat Mylar, to be filed in the Dutchess County Clerk's office, stating that a common driveway has been approved for the subdivision conditioned upon the recording of the approved common drive maintenance agreement in the Dutchess County Clerk's office.
12. § 105-22.L(5). Driveways shall slope from the road at a grade of not greater the 2% for a minimum distance of 20 feet measured from the edge of pavement.
13. Chapter 105, Appendix C, part I.2. The corners of the parcel shall also be located on the ground and marked by monuments as approved by the Planning Board, and shall be referenced and shown on the plat. The Planning Board may modify the requirement for a field survey of the entire plat.
14. Chapter 105, Appendix C, part I.8. Provide the proposed subdivision name.
15. Chapter 105, Appendix C, part I.9. Provide the name and address of the record owner and/or applicant.
16. Chapter 105, Appendix C, part I.14. Provide the name and address of all owners of all adjoining property and others within 500 feet of all property lines of the subject parcel, including property owners across the road from the proposed subdivision. The tax parcel ending in 050650 is not listed on the Engineering Plan.
17. Identify the total disturbance that will be caused by this project. If more than one (1) acre is disturbed a Notice of Intent and a Stormwater Pollution Prevention Plan is required by SPDES General Permit for Stormwater Discharges from Construction Activity Permit No. GP-0-10-001. This submission must be made prior to the start of construction.
18. Show the location of the underground electrical and telephone services, including any easements.
19. Provide a section through the driveway showing the details of its construction.
20. The driveway is subject to review by the fire department in accordance with § 105-22.6(4). Will the fire department require any pull offs? None are shown. If the individual driveway to Lot 2 is constructed, a pull off should be considered in the vicinity of STA 8+00.
21. It is likely that the discharge from the level spreader servicing the diversion swale will flow onto some portion of Lot No. 1. A drainage easement should be granted to Lot No. 2.

Memorandum  
Review Comments  
Petrides Subdivision  
September 30, 2010  
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Michael W. Soyka, P.E.

cc: Planning Board members via email  
Michael Hayes, Esq. via email  
Joseph Berger, PE via email  
George Petrides via email  
10-352-38



Michael W. Klemens, LLC

POB 432, Falls Village, CT 06031

October 6th, 2010

Mr. William Flood, Chairman and Members of the Town of Amenia Planning Board

PO Box 126 Mechanic Street, Amenia, NY 12501

Dear Mr. Flood and Members of the Planning Board:

At your request, I have examined various materials supporting the proposed Petrides subdivision located at 213 Separate Road. These materials include a letter from Berger Engineering dated 9 September 2010, part 1 of a full EAF (undated), a color figure entitled "Slope Analysis NTS" dated 09/09/2010 prepared by Berger Engineering, and 3 pages of subdivision and engineering plans dated 4/13/10 revised "per town comment" 09/08/10 prepared by Berger Engineering. I also conducted a 1.5 hour site examination accompanied by Mr. Petrides on the afternoon of October 1, 2010. The following are my initial comments on the application.

1. EAF Question A-11 pertains the presence of any species that are identified as threatened or endangered. I believe that the answer "No" is unsupported by the record. "Site walks by Berger Engineering and Surveying" do not constitute a substitution for the due diligence required to determine whether there are important biotic resources on site. Absent the obvious question of the ability of engineers and surveyors to make such an ecological assessment, an inquiry to the NY Natural Heritage Program would be the first step, providing documentation as to what the NY DEC has in its files concerning rare species and communities for the project site and immediate environs. A second line of inquiry would be consulting the Hudsonia map of significant habitats in the Town of Amenia. Based upon the results of those inquiries and documentation, the Planning Board would be in a far better position to decide if there were potential species of concern on or near the site, and whether the Applicant should be required to conduct any further biological evaluations of the site.

2. EAF Question A-15 states that there are no streams within or contiguous to the project site. The Wassaic Creek floodplain occurs contiguous to the site. This is known as Wetland AM-1. It is a riparian system. Amenia's stream overlay applies as per the Town's Zoning Law adopted July 19, 2007. The 150-foot stream overlay should be added to the site plans and subdivision plat.

3. EAF Question B-15 concerns the location of the project with regard to the 100-year flood plain. The Applicant should be requested to draw the 100-year floodplain on the site plans and subdivision plat, *if possible incorporating the imminent FEMA redrafts reflecting climate change*, thereby supporting the Applicant's statement/position that the project (i.e., the subdivision, not the proposed improvements) lie completely outside of the 100-year floodplain.

My site investigation revealed the following observations. The driveway to the existing house is eroding and washing out. This poses a threat to AM-1, but most importantly to the effectiveness and safety

of the driveway. Storm water management along the driveway is quite rudimentary, and in my opinion substandard, given the steep slopes and highly erodible soils.

The proposed subdivision site can be ecologically divided into two portions. There are a series of benches ( a geological term for flat areas that interrupt steep slopes) that lie to the north of the present house. This is where the proposed house is shown on the "Slope Analysis" figure. Because of the relative flatness of that area it is the logical place to site a house. The forest in that area is very young second growth, and the area has been logged repeatedly over time. The habitat changes at around the - 890 foot contour which is the edge of the steep slope above AM-1/Wassaic Creek. The young forest transitions (downslope) to a diverse and more mature forest characterized by a significant southwest facing ridge top ecological community which includes large examples of chestnut oak and chinquapin oak. There are also scattered red oaks, white oaks, sugar maples, ash, and black birch with hemlock being present as an understory tree along with witch hazel. Spring peepers and red-spotted newts were observed in the forest and it is assumed, because of the absence of any wetlands noted on the top of the ridge, that these amphibians both breed in AM-1 and use this forested slope in the non-breeding season, travelling back and forth from AM-1.

The creation of the proposed driveway would create severe impact to the forest, by the cuts and fills proposed on the Engineering Plan (2 of 3). Not only would the impacts damage the sensitive mature forest community, it would fragment the forest and diminish its ecological vitality, cause significant amphibian mortality, and potentially cause run off and siltation to AM-1. The creation of this driveway is a serious(significant) potential environmental impact which could be readily mitigated (through avoidance) by using the existing driveway as a common driveway with appropriate easements to serve both residences (existing and proposed). If the existing driveway is to become the common driveway serving two residences, it advised that the Planning Board revisit the design and stormwater management plan and improve that driveway. For example, there is increased attention being paid by engineers to the construction of driveways, especially those in steep slope areas, where a proper sub-base is installed similar to that if a paved roads. This allows water to move under the driveway rather than erode it. With properly sized and functioning swales and crowning of the road surface, a gravel driveway can be constructed that is far more functional and sustainable than that which is presently on site.

In conclusion, *from an ecological standpoint alone*, a subdivision is possible, provided that areas below 890 foot contour are not disturbed. The second (proposed) driveway therefore is eliminated and the subdivision is served through the existing driveway which would be upgraded to function properly as a common driveway and not cause further ecological disturbance through erosion and sedimentation. I will be at your meeting (October 7th) to answer any additional question that the Board, Applicant, or the public may have concerning my comments on this proposed subdivision.

Sincerely,

Michael W. Klemens, PhD

Michael W. Klemens, LLC

POB 432 Falls Village, CT 06031

September 30, 2010

Mr. William Flood, Chairman and Members of the Town of Amenia Planning Board

PO Box 126 Mechanic Street, Amenia, NY 12501

Dear Mr. Flood and Members of the Planning Board:

At your request I have examined the file on the Amenia Hills subdivision, including both the DEIS and FEIS documents and the June 2009 Engineering Report and Test Well Pumping Analysis prepared by Dvirka and Bartilucci, Consulting Engineers.

I have reviewed this application with special reference to the bog turtle, *Clemmys muhlenbergii*, which is a Federally-threatened (ESA) and State-endangered (NY-DEC) species. As you are aware, I was the compiler of the first edition of the bog turtle Federal Recovery Plan in 2001 which was subsequently amended by the USFWS in 2006.

I would advise the Planning Board to seek concurrence from the USFWS that this plan with its greatly reduced Zone 2 buffer width (below 300 feet) is still acceptable given the following criteria:

1. There has been a subsequent revision of the Recovery Plan in 2006 which post-dates the accepted FEIS of 2005.
2. The project now proposes to obtain water from wells sunk into to the underlying aquifer as opposed to joining into the existing municipal water district. This new alternative was not studied in either the DEIS or FEIS and raises additional concerns about potential impacts to AM-10.
3. The Amenia Hills development is contained almost totally within Zone 2 of the AM-10 bog turtle habitat. Appendix A of the Recovery Plan lists a variety of activities that should be avoided in Zone 2 due to their potential for adverse effects to bog turtles and their habitats including: roads, sewer lines, utility lines, storm water or sedimentation basins, residences, driveways, parking lots, and other structures.
4. The practices of the USFWS since the 2006 revision of the Recovery Plan have been far more stringent in the enforcement of the Zone 2 300-foot buffer. I believe that the Amenia Planning Board observed this stringency first-hand in the manner that the USFWS addressed incursions into the Zone 2 300-foot buffer on Depot Hill Farm, which is ecologically contiguous (in fact part of the same wetland) as the Amenia Hills site. Incursions are allowed when there are exceptional circumstances and must demonstrate appropriate avoidance and mitigation.

5. The proposed ground water withdrawals pose a new and previously unstudied impact to DEC Wetland AM-10, which is a documented bog turtle habitat. The Recovery Plan is quite explicit about the potential of alterations to ground water hydrology and its impacts to bog turtles that require spring-fed wetlands, known as fens. AM-10 has portions of habitat that can be classified as fen. Appendix B of the Dvirka and Bartilucci report provides documentation that these engineers specifically declined the DEC's request to evaluate the impacts of the well drawdown on AM-10, stating that they were beyond 500 feet from the stream, and therefore were not required to do so. However, in the case of the bog turtle, the Recovery Plan identifies three zones of concern, and all proposed activities (such as the Amenia Hills subdivision) need to be evaluated in accordance with those zones (see Appendix A of the Recovery Plan). Ground water withdrawals are specifically discussed in Zone 3 which extends at least one half mile beyond Zone Two (Zone 2= 300 feet from the wetland). Zone 3 "protects the ground and surface water recharge zones for bog turtle wetlands". The present design of the Amenia Hills subdivision (with the proposed wells) complies with neither Zone 2 nor Zone 3 requirements of the USFWS Recovery Plan. Not only should the effects of groundwater withdrawals on AM-10 be considered, but the effects of the overall cumulative groundwater withdrawals from the municipal wells and the wells proposed for Depot Hill and Amenia Hills developments need to be evaluated.

6. In my professional opinion, the 2005 Amenia Hills layout is not consistent with the prevailing USFWS standards and best management practices, especially as there may be feasible and prudent alternatives that would allow a reasonable use of the property while better conserving the ecological integrity of the habitat of this Federally-threatened species.

In conclusion the Amenia Hills subdivision does not meet current standards and best management practices for the protection of the bog turtle, the scientific data presented by the Applicant in the FEIS are more than ten years old and are therefore approaching the limit of their utility in providing a current biological picture of the site, the stormwater management plans do not factor in the current challenges of greater variability in rainfall patterns caused by climate change, and the proposed wells have not been adequately studied in regard to their ecological impacts to AM-10. Given these factors, it is my recommendation that the Planning Board seriously consider the implications of the Amenia Hills subdivision upon the ecological health and integrity of AM-10, which is a recognized bog turtle habitat.

Sincerely,

Michael W. Klemens, PhD